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Opinions under the Reciprocity (South-Africa) Rules, 1944

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File No. 9 Reciprocity 1/45

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176-A

CONTENTS.

Legal Department File No. O. Reciprocity/1945

Serial No.	R.I./O.No.	Subject	Pages.
		Opinions under the Reciprocity(South Africa) Rules,1944.	
1	O.No. 2040/14/3/45	Rule 2(b) exceptions-- question whether a South African National, who does not fall under any of the exceptions, & if he was already in India at the time of the publication of the Ordinance would be prohibited immigrant or a lawful resident/ under rule 16 could be issued in the exent of his visiting South Africa on leave or business and wishing to return.	1-2
2	O.No. 8553/15-11-45	Question whether notwithstanding regulation 6, the Appellate Authority can, if possible, order examination vica versa in open court.	3-4

SMR 9-7-56
5 Copies.

Office of the R.L.A.

'Prohibited immigrant" as defined in rule 2(b) of the Reciprocity(South Africa) Rules, 1944 means any person not being of Indian origin who is domiciled in the Union of South Africa other than a person specified in clauses(i) to (vi). Rule 3 bans entry into British India of a prohibited immigrant. Rule 4 provides that the Central Government may by order in writing direct any prohibited immigrant for the time being resident in British India to leave British India within such time as may be specified in the order. Rule 9 lays down that no prohibited immigrant shall be exempt from the provisions of these Rules or be allowed to remain in British India by reason only that he had not been informed that he might not enter or remain in British India, or that he had been allowed to enter or remain through oversight or mistake or owing to the fact having been undiscovered that he was a prohibited immigrant. Rule 14 enables the Central Government-

(a) to exempt any person from all or any of the provisions of these Rules and

(b) to authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in or to remain in British India subject to such conditions as the Central Government may think fit to impose. Rule 16(1) provides that the Central Government may if it thinks fit, authorise the Immigration Commissioner to issue a certificate of identity to any person lawfully resident in British India who, desiring to proceed to the Union of South Africa with the intention of returning therefrom, is for any reason apprehensive that he will be unable on returning to British India to prove that he is not a prohibited immigrant. The expression "any person lawfully resident in British India", read in its context, obviously refers to a person who is not a prohibited immigrant. A south African National, domiciled

in the Union of South Africa and who is not a person specified in clauses(i) to(vi) of rule 2(b), is clearly a prohibited immigrant and as such would not be entitled to a certificate of identity under rule 16(1) even though he may have been in residence in British India from a time prior to the passing of the Rules.

Id./P.N.M. 13/3/45
Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 2040, dated the 15th March 1945.

SMR 9-7-56
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Paras. 4 and 5 of P. & S.D. note at page 70.- The object of the Reciprocity(South Africa)Rules, 1944, is to provide machinery to decide whether a person is a prohibited immigrant and to order the departure of such immigrant from British India as expeditiously as possible. Consequently no elaborate procedure as is usually followed by Courts in trying cases could be properly laid down in regard to such machinery.

Regulation 6 of the draft Regulations provides that the depositions of parties or witnesses shall, if the Appellate Authority permits such evidence being given, be taken by affidavit. Oral evidence might perhaps be more preferable than evidence by affidavit, but the intention of the framers of the Regulations evidently appears to be to rule out all oral evidence before the Appellate Authority for the purpose of speedy disposal of the case. Moreover, evidence by affidavit would be the only feasible course in cases where the appellant is compelled to leave British India before the appeal is heard.

2 Para.6 of P.& S.D. note at page 70.- Rule 11 of the Reciprocity(South Africa)Rules, 1944, lays down that every person against whom any order is passed by the Immigration Commissioner or the Immigration Officer may appeal in writing through the Immigration Commissioner or Immigration Officer, as the case may be, to the Appellate Authority having jurisdiction within three clear days of the order appealed against or in respect of an order passed under clause (a) of sub-rule(1) of rule 7, before the departure of the vessel on which the appellant arrived, whichever is earlier.

Regulation 1 of the draft Regulation provides that every appeal against the order of the Immigration

Commissioner or the Immigration Officer, shall be preferred in the form of a memorandum signed by the Appellant and his pleader, if any, and presented to the Appellate Authority with a copy of the order appealed from and documents, if any, relevant to his appeal. The two are slightly inconsistent inasmuch as Rule 11 provides for presentation of the appeal through the Immigration Commissioner or the Immigration Officer, whereas Regulation 1 provides for its presentation direct to the Appellate Authority. For the sake of uniformity, I suggest that the words "through the Immigration Commissioner or the Immigration Officer, as the case may be," be inserted in Regulation 1 after the words "presented to the Appellate Authority".

3 Para. 7 of P.& S.D.note at page 70.- P.& S.D. proposes to commend to the Government of India the suggestion made by the District Judge, Broach & Panch Mahals that provision should be made in the draft Regulations giving power to the Appellate Authority to order costs in appeal. The R.L.A. has no serious objection to the course suggested but would like to point out that any order as to costs in appeal is likely to be futile if the appellant has, in the meantime, left the shores of British India.

4 Para 8 of P.& S.D. note at page 70.- Rule 11(3) of the Reciprocity(South Africa)Rules, 1944, lays down that save as provided in this rule no appeal or application for revision or review shall lie in respect of any order passed under these Rules. In the light of this provision it would hardly be proper to empower the Appellate Authority suo motu to call for and examine the records of any case. In any event since the aggrieved immigrant has a right to appeal, no useful purpose would be served by the Appellate Authority examini g the record of his case for the purpose of ascertaining whether any injustice has been done or not.

5 Incidentally it may be pointed out to the Government of India that the word "rule" in Regulation 3(ii) and Regulation 4 is inept and should be substituted by the word "regulation".